(1)
Supreme Court, U.S.
FILED
031683 JUN 16 2004
OFFICE OF THE CLERK

No. 04- _____

IN THE SUPREME COURT
OF THE UNITED STATES

WAYNE S. STILLMAN,
Petitioner,
v.
STATE OF COLORADO, Bill Owens, Governor,
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of the State of Colorado

PETITION FOR WRIT OF CERTIORARI

Wayne S. Stillman
19634 Silver Ranch Rd.
Conifer, Colorado 80433
Petitioner, *Pro Se*
(303)697-7676

QUESTIONS PRESENTED FOR REVIEW

Under a Colorado domestic relations law, a divorced or never married parent is subject to the imposition of a sum certain amount of child support to be paid to the other parent based on a tabulated calculation involving, *inter alia*, the total of incomes of both parents and the number of children involved. C.R.S. §14-10-115. The obligor parent is subject to punishment by the court, including but not limited to incarceration, for failure to timely pay the precise amount ordered as "child support." The following questions are presented:

1. Does Colorado's statutory requirement that an unmarried parent pay a sum certain amount of money to support his or her child unconstitutionally abridge the paying parent's right to equal protection of the laws?

2. Does Colorado's statutory requirement that an unmarried parent pay a sum certain amount of money to support his or her child unconstitutionally abridge the paying parent's right to substantive due process?

3. Does Colorado's statutory requirement that an unmarried parent pay a sum certain amount of money to support his or her child unconstitutionally abridge the paying parent's right to privacy and freedom from state interference in family affairs, absent a state's compelling interest?

4. Does Colorado's statutory requirement that an unmarried parent pay a sum certain amount of money to support his or her child represent an unconstitutional taking of private property for public and/or private use?

5. Does the threat or effectuation of incarceration for failure to pay a state-imposed "debt" pursuant to Colorado's statutory requirement that an unmarried parent pay a sum

certain amount of money as child support constitute an unconstitutional imprisonment for debt?

PARTIES

The caption on the cover contains the names of all parties. None of the parties is a corporation. See Rule 29.6.

TABLE OF CONTENTS

Questions Presented for Review i
Parties iii
Table of Contents iv
Table of Authorities vii
Decisions Below 1
Jurisdiction 1
Constitutional and Statutory Provisions Involved 1
Statement of the Case 2
A. Statement of Material Facts 2
B. Statement on Preservation Below of Federal Questions 3
1. *The trial court's treatment of the federal questions* 3
2. *The Colorado Court of Appeals' treatment of the federal questions* 6
3. *The Colorado Supreme Court's treatment of the federal questions* 7
REASONS FOR GRANTING THE WRIT 7
I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT 7
A. The Decision Below Conflicts with this Court's Equal Protection Decisions 8
1. *Stanley v. Illinois* 8
2. *Glona v. American Guarantee Co.* 9
B. The Decision Below Conflicts with this Court's Decisions Regarding the Standard of Review for Fundamental Rights Cases 10
C. The Decision Below Conflicts with this Court's Substantive Due Process Decisions 13
D. The Decision Below Conflicts with this Court's Privacy Decisions 15
E. The Decision Below Conflicts with this Court's Unconstitutional Takings Decisions 17

F. The Decision Below Conflicts with this Court's Due Process Decisions With Respect To Interpretation 19
II. THE PETITION PRESENTS IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW THAT THIS COURT SHOULD RESOLVE . 22
CONCLUSION 24

Contents

A Order of the Colorado Supreme Court, *Stillman v. Colorado, Case No. 03SC761, March 22, 2004* **a-1**

B Order of the Colorado Court of Appeals, *Stillman v. Colorado, Case No. O2CA1627, October 23, 2003* **a-2**

C Order of the District Court, City and County of Denver, *Stillman v. Colorado, Case No. 02CV3778, August 6, 2002* **a-7**

D United States Constitution amend. V **a-15**

E United States Constitution amend. XIV § 1 **a-15**

F Colorado Constitution, Article II, § 3 **a-15**

G Colorado Constitution, Article II, § 12 **a-16**

H Colorado Constitution, Article II, § 14 **a-16**

I Colorado Constitution, Article II, § 15 **a-16**

J Colorado Constitution, Article II, § 25 **a-17**

K Colorado Revised Statutes, § 14-6-101(1) **a-17**

L Colorado Revised Statutes, § 14-10-104.5 **a-18**

M Colorado Revised Statutes, § 14-10-115 **a-19**

TABLE OF AUTHORITIES

Federal Cases

Cipriano v. City of Houma, 395 U.S. 701 (1969) 13
City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) .. 13
Clark v. Nash, 198 U.S. 361 (1905) 19
Cole v. La Grange, 113 U.S. 1 (1885) 18
Dunn v. Blumstein, 405 U.S. 330 (1972) 13
Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112 (1896) 18
Glona v. American Guarantee Co., 391 U.S. 73 (1968) 8, 9
Griswold v. Connecticut, 381 U.S. 479 (1965) 15
Korematsu v. United States, 323 U.S. 214 (1944) 11
Kramer v. Union Free School Dist., 395 U.S. 621 (1969) 13
Mt. Vernon-Woodberry Cotton Duck Co., v. Alabama Interstate Power Co., 240 U.S. 30 (1916) 19
Personnel Administrator v. Feeney, 442 U.S. 256 (1979) 11
Roe v. Wade, 410 U.S. 113 (1973) 15
Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) 20
Shapiro v. Thompson, 394 U.S. 618 (1969) 13
Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942) 13
Solesbee v. Balkcom, 339 U.S. 9 (1950) 21
Snyder v. Massachusetts, 291 U.S. 97 (1934) 21
Stanley v. Illinois, 405 U.S. 645 (1972) 8
Troxel v. Granville, 000 U.S. 99-138 (2000) 13

Washington v. Seattle School Dist., 458 U.S. 457 (1982) 11

State Cases

Colorado State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980) 21
In Re Marriage of Nussbeck, 974 P.2d 493 (Colo. 1999) 5
Wynhamer v. The People, 13 N.Y. 378 (1856) 20

Constitutional and Statutory Provisions

U.S. Constitution amend. V 1, 3, 5, 18
U.S. Constitution amend. XIV § 1 ..... 1, *passim*
Colo. Const., Art. II, § 3 1
Colo. Const., Art. II, § 12 ..... 1, 21
Colo. Const., Art. II, § 14 ..... 1, 17
Colo. Const., Art. II, § 15 ..... 1, 17
Colo. Const., Art. II, § 25 1
28 USC § 1257 1
C.R.S. § 14-6-101 ..... 1, 10
C.R.S. § 14-10-104.5 ..... 1, 17
C.R.S. § 14-10-115 ..... 1, *passim*

DECISIONS BELOW

The decision of the trial court is unpublished. App at a-7. The decision of the Colorado Court of Appeals is likewise unpublished. App. at a-2. The Order of Court of the Colorado Supreme Court denying the Petition for Writ of Certiorari to the Colorado Court of Appeals is unpublished. App. at a-1.

JURISDICTION

The Order of Court of the Colorado Supreme Court denying the Petition for Writ of Certiorari to the Colorado Court of Appeals was issued on March 22, 2004. No rehearing was requested and no extension of time to file this petition was requested. This Court has jurisdiction under Title 28 USC §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

The following constitutional and statutory provisions involved in this case are set forth in the Appendix to the Petition: United States Constitution amend. V; United States Constitution amend. XIV § 1; Colorado Constitution, Article II, § 3; Colorado Constitution, Article II, § 12; Colorado Constitution, Article II, § 14; Colorado Constitution, Article II, § 15; Colorado Constitution, Article II, § 25; Colorado Revised Statute § 14-6-101; Colorado Revised Statute § 14-10-104.5; Colorado Revised Statute § 14-10-115.

STATEMENT OF THE CASE

The Colorado Supreme Court upheld the constitutionality of a statute requiring the imposition of a sum certain amount of child support to be paid by one parent to the other parent under the circumstances where the parents are not married. The court did so despite the statute's implied and often utilized threat to incarcerate a non-payer of this arbitrary, state-imposed "debt" by exercise of a trial court's contempt powers, where the state constitution prohibits such incarceration.

C.R.S. § 14-10-115 imposes upon a parent otherwise innocent of any suspicion of or actual wrongdoing with respect to his child the obligation to pay a sum certain amount for the financial support of that child. App. at a-19.

A. Statement of Material Facts

Wayne S. Stillman is the divorced natural father of two minor children who are the issue of his marriage, which was dissolved by Decree and Judgment of the Jefferson County (Colorado) District Court in 1998. Compl. ¶8[1]. The Decree and Judgment provided for shared legal, physical and residential custody of the minor children by each natural parent, which has been exercised by both parents at all times since the divorce. Compl. ¶¶8, 10. Pursuant to C.R.S. § 14-10-115, the district court entered orders for child support in the amount of $837 per month at the time of dissolution of the marriage to be paid by Stillman to his ex-wife. Compl. ¶11. The sum certain child support amount was reduced slightly in June, 2003, due to a change in Stillman's economic circumstances.

[1]"Compl." refers to the Verified Complaint for Declaratory Judgment and Injunctive Relief filed in the Denver District Court on May 7, 2002.

There is no dispute between the parties that Stillman has at all times during and after his marriage supported his children in a comfortable, safe, healthy and secure manner.

B. Statement on Preservation Below of Federal Questions

The federal questions presented in this Petition have been the central focus of the dispute between the parties and the principal grounds of the decisions below. Petitioner sued in the District Court of the City and County of Denver, Colorado. Therein, Petitioner asserted that C.R.S. §14-10-115 violated several federal constitutional rights, as well as several more state constitutional rights, of which one (unconstitutional taking) is a state counterpart to the takings clause of the Fifth Amendment. Petitioner alleged that C.R.S. §14-10-115 violated his constitutional rights to equal protection of the laws, substantive due process and privacy. Compl. ¶¶1, 12-14, 15-19, 20-24, 25-28. Petitioner further alleged the C.R.S. §14-10-115 violated his constitutional rights to property and to be free of the threat of imprisonment for debt. Compl. ¶¶29-31, 32-33. These arguments were propounded throughout the state appellate briefings.

1. *The trial court's treatment of the federal questions*

The trial court dismissed all of Petitioner's claims. App. at a-7. Initially, the trial court evinced a complete misapprehension of the gravamen of the challenge by stating: "Plaintiff commences all of his causes of action by stating how the child support guidelines violate 'his' rights. The statutory law and case law in the state of Colorado recognizes, however, that persons other than parents are involved in assessing child support" (App. at a-8) when it is the facts that "other persons" are involved and that an "assessment" is being made without a compelling state interest which are at issue here.

The trial court then refocused the issues away from those of the complaint entirely when it stated:

> The Court must therefore view Plaintiff's claims not only under the standards for Rule 12(b), C.R.C.P., motions cited above, but also with an eye to the rights of Plaintiff's children and the responsibilities that Plaintiff and his wife have to support those children. Further, because Plaintiff asks that the statute be declared unconstitutional not only as to him but unconstitutional as applies [sic] to all matters, the Court must view this in terms of all children in Colorado who are entitled to support from their now-divorced parents and all children in Colorado who in the future may be subject to that support obligation by virtue of divorces which have not yet taken place. App at a-9

As to the equal protection claim, the trial court concluded: "Plaintiff's equal protection claim fails because he is being treated the same as all divorced parents in the state of Colorado." App. at a-10. The trial court relied upon the fact that, "the legislature itself has stated that those persons who are similarly situated, that is to say both parties to a divorce, have the same obligations." App. at a-10. And that, "Therefore, there is no violation of equal protection. *Id.*

As to the due process claim, the trial court found that, "This claim must also fail." App. at a-11. With regard to whether application of the guidelines "would be inequitable, unjust, or inappropriate" (14-10-115(3)(a)) (App. at a-24), the trial court found that, "The opportunity for

hearings are provided for persons who are divorcing to produce evidence which would demonstrate that the application of the guidelines would fall into one of those categories." App at a-11.

The court opined that, "the purpose of the child support guidelines . . . is to address a critical state interest, the support of children in divorce situations" and that, "a sliding scale of support obligations . . . is a legitimate state interest." Further, the trial court found that, "The statute itself does not address a fundamental right nor does it place plaintiff in a suspect class. The statute is narrowly tailored to address a significant state interest and the Plaintiff's second claim, therefore, fails." App. at a-11.

As to the privacy claim, the trial court found that, "On its face Plaintiff's claim fails." App. at a-12. The court further found that the child support guidelines, "apply equally and they apply for a legitimate public interest. The fact that a divorced parent has had certain statutory minimums set up to ensure support for children of divorced parties in no way invades Plaintiff's privacy." *Id.*

As to the unconstitutional taking claim (which directly intersects with the proscription in the Fifth Amendment), the trial court held that the state counterparts, "relate to the taking of real property and water rights associated with real property. Plaintiff has not alleged that there has been any taking of any of his real property or rights in water use and therefore his claim cannot stand." App at a-12.

Though not strictly a federal question, the trial court's treatment of the fifth claim is included here. As to the threat of imprisonment for debt claim, the trial court relied upon a prior Colorado Supreme Court ruling (*In Re Marriage of Nussbeck*, 974 P.2d 493 (Colo. 1999) involving "persistent and willful refusal" to comply with a court

order) to state that Petitioner's claim had been previously addressed, that "that such potential [for imprisonment] is not an imprisonment for debt" and that "the claim must therefore fail." App. at a-13.

2. *The Colorado Court of Appeals' treatment of the federal questions*

The Colorado Court of Appeals affirmed. App. at a-3. The appeals court stated, "The trial court made findings on each argument and dismissed the complaint. Father asserts, however, that the court did not adequately address his arguments. We find no error." App. at a-3.

The appeals court further stated, "Although parents have a right to privacy in matters related to child-rearing and family relationships, this right is not absolute, and the family is subject to regulation in the public interest" and, "a parent has no privacy interest in the process by which child support obligations are determined because support levels are not purely private determinations, but serve a public function and are subject to court approval." App. at a-3.

The appeals court held that, "the child support guidelines do not infringe upon a fundamental right. [Citation omitted.] Nor do they discriminate against a suspect class or significantly interfere with a fundamental right. [Citation omitted.] Therefore, the rational basis test applies to the evaluation of father's constitutional challenges. [Citations omitted]. We agree with the trial court that the state has a legitimate interest in requiring divorced or separated parents to provide child support based on the parties' combined gross incomes." App. at a-4.

The appeals court held that Stillman had not shown he was similarly situated to married parents. *Id.* On the claim of equal protection violation the appeals court stated, "Nev-

ertheless, even if we accept the argument that a divorced or separated parent is treated disparately by the imposition of a child support obligation, we conclude that the statutory distinction made by § 14-10-115 does not violate such parent's right to equal protection. A distinction between sets of parents based on marital status is rationally related to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation." App. at a-5.

The appeals court concluded, "... because it approximates the amount of parental income that the child would have received in an intact family, application of the guidelines is not arbitrary, capricious, fundamentally unfair, or coercive." *Id.*, and "the imposition of a certain amount of child support by application of the child support guidelines does not infringe upon father's constitutional rights." *Id.*

The appeals court found no constitutionally protected taking in the imposition of sum certain child support (App. at a-5), and that imprisonment for contempt for failure to pay child support does not constitute imprisonment for debt. *Id.*

3. *The Colorado Supreme Court's treatment of the federal questions*

The Colorado Supreme Court indicated in its order of dismissal that it reviewed "the record, briefs, and the judgment of said Court of Appeals" and denied Stillman's petition for writ of certiorari. App. at a-1.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT

The challenged statutory provision is functionally similar to the presumption of unfitness provision struck down by this Court in *Stanley v. Illinois*, 405 U.S. 645 (1972). Its operation is indistinguishable on any substantive basis from the legitimacy distinction for recovery for wrongful death struck down in *Glona v. American Guarantee Co.*, 391 U.S. 73 (1968). The decisions below upholding the challenged Colorado statute squarely conflict with the decisions of this Court.

A. The Decision Below Conflicts with this Court's Equal Protection Decisions

1. *Stanley v. Illinois*

The challenged statute imposes the burden of a sum certain child support obligation on a parent in the event of dissolution of that parent's marriage or when the parent has never married the other parent. The rationale for this imposition of a fixed amount of "child support" is that the state has an alleged interest in insuring that children of unmarried parents are adequately cared for. The implication in such a state act is that the parent upon whom this burden is imposed would not otherwise "adequately" care for his or her child – that he would be derelict in his acknowledged duty of support and by logical extension unfit. The court below concluded that such state imposition was constitutional. The judgment below clearly conflicts with this Court's cases.

Stanley involved a case of state statutory presumption of parental unfitness on the part of an unwed father without any proof of neglect, whereas the scheme at that time did not allow the state to assume custody of children of married or divorced parents or a single mother. This Court held that, pursuant to due process, the petitioner in *Stanley* was entitled to a hearing when the state proposed to take

custody of his offspring and that denial of such a hearing violated his right to equal protection of the laws.

In the matter at hand, the challenged statute, while providing for a hearing, *presumes* that the potential child support obligor will *not* support his children adequately and reasonably by establishing a "presumptive" adequate level of "support" without *any* proof of neglect or unfitness. Section (3)(a) of the statute states, in pertinent part:

> In any action to establish or modify child support, whether temporary or permanent, the child support guideline as set forth in this section shall be used as a rebuttable presumption for the establishment or modification of the amount of child support.

This is equivalent to this Court in *Stanley* allowing the State of Illinois to *presume* the unwed father to be unfit and to force him to "prove" his fitness. Such an outcome – in either *Stanley* or Colorado's sum certain child support scheme – is anathema to this Court's long history of championship of equal protection.

2. *Glona v. American Guarantee Co.*

The mandate of the challenged statute for sum certain child support created a legal line in the sand between married parents and those who have ceased to be or who chose not be be married. However, this Court has rejected such an artificial distinction in cases involving family relations. In *Glona v. American Guarantee Co., supra*, at 75, (involving a claim for damages for wrongful death of an illegitimate son, denied by the State of Lousiana), this Court stated:

> To say that the test of equal protection should

> be the "legal" rather than the biological relationship is to avoid [391 U.S. 73, 76] the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such "legal" lines as it chooses.

This Court upheld the right of the mother to recover for the death of her illegitimate son, rejecting the notion that only parents of "legitimate" children could so recover under state law, and affirmed that any such distinction was a violation of the Equal Protection Clause of the Fourteenth Amendment.

However, it is just such a distinction which the challenged statute does, in fact, create. The statute treats unmarried parents as having no right to determine the precise nature of the care and nurturing of their offspring, substituting instead the combined and tabulated wisdom of the state legislature to establish that care, whereas the state does not interfere with the equivalent care and nurture of children provided by married parents without a showing of a compelling interest.

Moreover, Colorado has in effect a statute, C.R.S. 14-6-101 (App. at a-17), which provides that anyone who fails or refuses to provide reasonable support for his children, *inter alia*, is guilty of a felony.

B. The Decisions Below Conflict with this Court's Decisions Regarding the Standard of Review for Fundamental Rights Cases

The State of Colorado has admitted that the legislation created a class of people: "The general assembly has in effect created a group of parents, those parents whose marriage is dissolved, who must fulfill their obligations and commitments to their children as 'ordered by the court.'"

(Mot.Dismiss, p. 3)[2] This legislatively created "class" – unprecedented in American history except in the halls of domestic relations courts – is every bit as suspect as that based on race (*Korematsu v. United States*, 323 U.S. 214, 216 (1944), applying "rigid scrutiny"; *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979), "A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification"; quoted in *Washington v. Seattle School Dist.*, 458 U.S. 457, 485 (1982)).

The Colorado Court of Appeals – upheld by the Colorado Supreme Court by its denying certiorari – applied the *least* rigorous standard of review of Petitioner's constitutional challenge to the statute (App. at a-4):

> Furthermore, the child support guidelines do not infringe upon a fundamental right. See Ga. Dep't of Human Res. v. Sweat, supra. Nor do they discriminate against a suspect class or significantly interfere with a fundamental right. See In re Marriage of McGinley, 172 Or. App. 717, 19 P.3d 954 (2001) Therefore, the **rational basis test** applies to the evaluation of father's constitutional challenges. See Ga. Dep't of Human Res. v. Sweat, supra; see also P.O.P.S. v. Gardner, 998 F.2d 764 (9th Cir. 1993); cf. Zabbocki v. Redhail, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978) (state statute forbidding noncustodial parent with child support obligation from marrying without obtaining court permission is subject to strict scrutiny because of the direct interference with family

[2]"Mot.Dismiss" refers to the State's Motion to Dismiss filed in the Denver District Court on June 7, 2003.

> relationships) ... Nevertheless, even if we accept the argument that a divorced or separated parent is treated disparately by the imposition of a child support obligation, we conclude that the statutory distinction made by § 14-10-115 does not violate such parent's right to equal protection. A distinction between sets of parents based on marital status is **rationally related** to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation. [Emphasis added.]

However, as far back as World War II, in *Korematsu* this Court recognized that classifications which infringe upon fundamental civil rights are subject to "rigid" scrutiny:

> It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.
> *Korematsu, supra*, at 216.

The civil rights of parents to the care, custody, management and nurture of their children deserve no less deference and protection. The rights, which the Petitioner asserts are being violated, all constitute universally recognized fundamental rights, as they are all embodied in the Federal and/or State Constitutions. Whenever a state would attempt to infringe such fundamental rights in favor of a

"state interest," that interest must be compelling (*Shapiro v. Thompson*, 394 U.S. 618, 627 , 634, 638 (1969); *Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Dunn v. Blumstein*, 405 U.S. 330 (1972)) and the standard of review is one of strict scrutiny (*Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942)). The lower court clearly applied an inadequate standard of review, and this Court cannot countenance the state's treatment of a parent differently simply because he is no longer or has never married the other parent.

C. The Decision Below Conflicts with this Court's Substantive Due Process Decisions

The lower court stated that "the family is subject to regulation in the public interest" (App. at a-3) and that "because it approximates the amount of parental income that the child would have received in an intact family, application of the guidelines is not arbitrary, capricious, fundamentally unfair, or coercive" (App. at a-5).

In *Troxel v. Granville*, 000 U.S. 99-138 (2000)[3], this Court stated:

> The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." Washington v. Glucksberg, 521 U. S. 702,

[3]Main opinion, Section II, third paragraph; Petitioner's source for this case lacked page numbers

719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720; see also Reno v. Flores, 507 U. S. 292, 301-302 (1993).

This Court went on to reiterate that a parent's "care, custody and control" of children was one of the oldest fundamental liberty interests recognized here. The Court cited a long line of its own cases and came to the conclusion that, "In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." The right to the care, custody and control – and by a very short extension of logic, the right to *self-determination* in that care – is not forfeited by a parent by the mere occurrence of divorce or having a child born out of wedlock. If that were so, then the rights so carefully scrutinized and declared by this Court would not be "fundamental" at all, but rather mere grants of privilege by the state, removable at the whim of the state.

Under the challenged statute, Petitioner enjoys no self-determination in the custody, care and control of his children with respect to the expenditures which the state requires of him; he is forced to expend a precise sum of money each month, ostensibly for that very care, without the state have demonstrated any interest compelling enough – such as a failure to provide or other negligence – to warrant such an intrusion. Moreover, the sum certain amount of child support is arbitrary – having been fixed by the state legislature with no regard for the payor's or the payor's children's needs or desires. The outcome of this state action is a purely capricious scheme which purports to solve

a "problem" where none has been found to exist but which, in the meantime, violates the fundamental fairness which is the hallmark of substantive due process.

D. The Decision Below Conflicts with this Court's Privacy Decisions

Justice Louis Brandeis, in a quote famously attributed to him, described privacy as "the right to be let alone."[4] This Court has extended this right as against government interference in personal spheres encompassing a protected liberty interest.

In *Griswold v. Connecticut*, 381 U.S. 479 (1965) this Court found an independent right of privacy, derived from the confluence of several provisions of the Bill of Rights or discovered in the "penumbras" of these provisions, which was expounded upon by the Court and actually used to strike down a governmental restraint. ("The Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights. Pp. 481-486.") It is self-evident that both government restraint as well as government compulsion, as in the challenged statute here – mirroring the concepts of prohibition and mandamus – are subject to Constitutional scrutiny.

This Court expounded numerous manifestations of personal privacy in *Roe v. Wade*, 410 U.S. 113 (1973):

> ...the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the

[4] *The Right to Privacy*, Warren and Brandeis, Harvard Law Review, Vol. IV, No. 5, December 15, 1890; quoting *Cooley on Torts*, 2d ed., p. 29. [p. 195 Note 4 in original].

> Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in ... the penumbras of the Bill of Rights, Griswold v. Connecticut, 381 U.S., at 484 -485 ... in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see Meyer v. Nebraska, 262 U.S. 390, 399 (1923). ... These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation, Skinner v. Oklahoma, 316 U.S. 535, 541 -542 (1942); ... family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and child rearing and education, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925), Meyer v. Nebraska, supra.
>
> *Roe, supra*, at 152.

The court below stated, "Although parents have a right to privacy in matters related to child-rearing and family relationships, this right is not absolute, and the family is subject to regulation in the public interest." App. at a-3. And it went on: "Thus, a parent has no privacy interest in the process by which child support obligations are determined because support levels are not purely private determinations, but serve a public function and are subject to court approval." *Id.*

And finally, on the issue of privacy, the court below stated, "... we conclude that, because it approximates the amount

of parental income that the child would have received in an intact family, application of the guidelines is not arbitrary, capricious, fundamentally unfair, or coercive." App. at a-5.

It is impossible to square the notions of privacy set out by this Court with the coercive, arbitrary imposition of a sum certain amount of money which must be paid towards the care, custody and nurture of one's own offspring in the privacy of the family relationship, whether or not that relationship includes a "husband and wife" living together. Moreover, given that parents not living together must maintain *two* households, not one, the state-imposed criterion reiterated by the lower court above that the child should receive parental income in an amount roughly equivalent to the economics of a set of parents under one roof is the epitome of government caprice, arbitrariness and gross interference in private family decision-making.

E. The Decision Below Conflicts with this Court's Unconstitutional Takings Decisions

Since the underlying litigation commenced as a state action, involving certain questions of federal law, Petitioner initially argued that the challenged statute violated certain state constitutional proscriptions against takings (Colo. Const., Art. II, §§ 14 and 15). These provisions are found in the Colorado Constitution's section entitled "Bill of Rights" and are modeled on the federal constitutional provisions which predated them by nearly a century.

With respect to the claim that sum certain child support represents an unconstitutional taking, the lower court held that, "The state has a public interest in mitigating the potential harm to children caused by the dissolution of marriage. Section 14-10-104.5, C.R.S. 2002." App. at a-3. And, "The trial court also correctly found that father did

not establish a constitutionally protected taking." App. at a-5.

It is clear from the first holding above that Colorado considers child support payment to be a requirement to satisfy a public interest or public purpose, and this is a judicial determination as required by the Colorado Constitution[5]. The due process clause of the Fourteenth Amendment has been held to require that when a state or local governmental body, or a private body exercising delegated power, takes private property it must provide just compensation and take only for a public purpose. The Colorado Constitution provides for private takings for private use only in very limited circumstances (*cf.* Art. II, § 14 at App. a-16) and § 15 thereof still requires compensation in any event for either public or private takings. App. at a-16.

Despite the alleged "public" use of sum certain child support paid under the challenged statute, in fact the ultimate user of this payment is the recipient parent, a private party. And the child support so paid is expended for a distinctly private use, ostensibly that of caring for the mutual offspring of the two parents involved. Explicit in the just compensation clause of the Fifth Amendment is the requirement that the taking of private property be for a public use. This Court has long accepted the principle that one is deprived of his property in violation of this guarantee if a State takes the property for any reason other than a public use. *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112, 158 -59 (1896); *Cole v. La Grange*, 113 U.S. 1, 6 (1885).

[5]Art. II, § 15, in part: "...whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public."

At an earlier time, the prevailing judicial view was that the term "public use" was synonymous with "use by the public" and that if there was no duty upon the taker to permit the public as of right to use or enjoy the property taken, the taking was invalid. But this Court rejected this view some time ago. *Clark v. Nash*, 198 U.S. 361 (1905); *Mt. Vernon-Woodberry Cotton Duck Co., v. Alabama Interstate Power Co.*, 240 U.S. 30, 32 (1916). The modern conception of public use equates it with the police power in the furtherance of the public interest. Some of the traditional applications of the police power are public safety, public health, morality, peace and quiet, and law and order. Nowhere in this Court's holdings has a taking, under either the Fourteenth or Fifth Amendments, been justified to maintain the lifestyle of a private individual who is a stranger-at-law to the person whose property is taken.

The challenged statute violates holdings of this Court that the taking of private property for other than public use violates the just compensation clause of the Fifth Amendment and due process under the Fourteenth.

F. The Decision Below Conflicts with this Court's Due Process Decisions With Respect To Interpretation

The lower court stated, "...the trial court correctly determined that a finding of contempt for violation of a court order does not subject a parent to imprisonment for failure to pay a debt. See In re Marriage of Nussbeck, 974 P.2d 493 (Colo. 1999) . As the trial court found, § 14-10-115 provides the opportunity for an evidentiary hearing prior to the imposition of a child support order, and so the requirement for procedural due process is satisfied." App. at a-6. In fact, however, procedural due process was never at issue in the case below. All due process claims were focused on

the *substantive* component of due process. Inherent in the substantive due process clauses of both the Fifth and Fourteenth Amendments is the assumption that the law under which process is due is itself valid and constitutional, else "due process" becomes an empty shibboleth of the judicial class and not a bulwark against government tyranny.

There exists in the "law of the land" and the "due process" clauses of the state constitutions a restriction upon the substantive content of legislation, which prohibited, regardless of the matter of procedure, a certain kind or degree of exertion of legislative power altogether.[6]

Thus, Chief Justice Taney was not innovating when in his opinion in the Dred Scott case he pronounced, without elaboration, that one of the reasons the Missouri Compromise was unconstitutional was that an act of Congress which deprived "a citizen of his liberty or property merely because he came himself or brought his property into a particular territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law." *Scott v. Sandford*, 60 U.S. (19 How.) 393, 450 (1857).

This Court has articulated the most profound and historical meaning of the protection of due process:

> It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and

[6] *Cf.* generally, *Wynhamer v. The People*, 13 N.Y. 378 (1856)

just.
Solesbee v. Balkcom, 339 U.S. 9, 16 (1950) (Justice Frankfurter dissenting).

According to this Court, due process is violated if a practice or rule "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

Recurring child support payments due pursuant to the challenged statute are a "debt" in Colorado. An order for child support payments is reduced to judgment entered "against" the obligor and in favor of the obligee as the result of an adversarial judicial proceeding, and is therefore a **money judgment**.

In *Colorado State Bank v. Utt*, 622 P.2d 584 (Colo. App. 1980), the Colorado Court of Appeals stated: "Past due child support payments in themselves constitute a debt. Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961); Carey v. Carey, 29 Colo. App. 328, 486 P.2d 38 (1971)."

Article II, § 12 of the Colorado Constitution states: "No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as **shall be prescribed by law**, or in cases of tort or where there is a strong presumption of fraud." (Emphasis added.)

Assuming *arguendo* that despite all the reasons in previous sections above, sum certain child support were somehow "constitutional," *there is no provision in the challenged statute for enforcement of it by imprisonment.* There is no manner prescribed by law for the enforcement of this "debt"

other than by general execution of judgment as with any other judgment debt.

Notwithstanding the foregoing, the lower court's decision that operation and enforcement of the challenged statute does not subject Petitioner to the threat of, or actual, imprisonment for an arbitary, state-imposed debt conflicts with this Court's Due Process holdings that outcomes of court proceedings must be fundamentally fair, legal and not offend "some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." To be imprisoned for a debt imposed by the state under an unconstitutional law and in defiance of state constitutional proscriptions prohibiting such imprisonment, mightily offends the conscience of a free people, not to mention the mandates of this Court.

II. THE PETITION PRESENTS IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW THAT THIS COURT SHOULD RESOLVE

Ultimately, this petition presents a simple question of national importance. Does the child support scheme in Colorado, which is mirrored in virtually every state of the union, actually serve the interests of children of divorce or never-married parents – who will themselves be parents some day – or is it an unconstitutional statutory creation which obliterates numerous fundamental rights of parents in America?

The right of a parent to determine for him- or herself the quality and nature of the upbringing and maintenance of one's child and the right to the possession and disposition of one's own property are both fundamental, essential rights well anchored in the United States Constitution and the jurisprudential history of this Court.

C.R.S. § 14-10-115 assumes that parents in other than an intact marriage will be scofflaws with respect to the health, safety and economic security of their offspring. The statute directly restricts activities entitled to the utmost constitutional protection. While purporting to secure the state's interest in ensuring that children of divorce and those in never-married situations are adequately cared for, the statute does no such thing, as it is not truly designed to do that as Colorado's felony non-support statute is. The challenged statute is only designed to transfer wealth from one person to another.

In the process of enforcing the statute, the state has created a highly suspect class of persons – unmarried parents – which it then treats completely differently from married parents, despite the fact that *all* parents are similarly situated *with respect to their children*, because all parents whose rights have not been duly terminated have a duty to provide reasonable and adequate support for their offspring.

The statute's enforcement removes from the owing parent the autonomy in the care, custody, control, nurture and management which this Court has determined, from various perspectives, inheres in every fit parent. It infringes the privacy of the family relationship and the right of the parent – and the child – to be free of arbitrary government intrusion in their personal affairs. The statute forcibly takes property from one person and delivers it to another, purportedly for a "public" use but in fact for a private one, without just compensation. And finally, the statute threatens or actually causes persons who have violated no constitutional laws to be imprisoned for a failure or other inability to "pay" this state-determined, state-imposed "debt" to another.

To add insult to constitutional injury, just as troubling as the above is the facile manner with which the Colorado Court of Appeals – and by implication, in its denial of certiorari, the Colorado Supreme Court – have subjected a statute, the review of which should be made under the strictest scrutiny because the implicated rights are the most fundamental, to the least rigorous standard of review, as if the "rights" in question were traffic laws or curfew hours.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a writ of certiorari issue to review the judgment of the Colorado Supreme Court. On review, the judgment of that court should be reversed and the challenged statute held to be unconstitutional, void and of no further force or effect.

Respectfully submitted,

WAYNE S. STILLMAN
PRO SE
19634 Silver Ranch Rd.
Conifer, CO 80433
303-697-4027
Petitioner

June 16, 2004

APPENDIX

APPENDIX

A Order of the Colorado Supreme Court, *Stillman v. Colorado, Case No. 03SC761, March 22, 2004*

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

CERTIORARI TO COURT OF APPEALS, 02CA1627
DISTRICT COURT, CITY & COUNTY OF DENVER, 02CV3778

CASE NO. 03SC761

Petitioner:

WAYNE S. STILLMAN,

v.

Respondent:

STATE OF COLORADO and BILL OWENS, Governor.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MARCH 22, 2004.

[Seal of Court, illegible, no signature]

B Order of the Colorado Court of Appeals, *Stillman v. Colorado, Case No. O2CA1627, October 23, 2003*

COLORADO COURT OF APPEALS

Court of Appeals No. O2CA1627 City and County of Denver District Court No. 02CV3778 Honorable H. Jeffrey Bayless, Judge

Wayne S. Stillman,

Plaintiff-Appellant,

V.

State of Colorado and Bill Owens, Governor,

Defendants-Appellees.

ORDER AFFIRMED

Division A Opinion by JUDGE HUME* Davidson, C.J., and Webb, J., concur

October 23, 2003

Wayne S. Stillman, Pro Se

Ken Salazar, Attorney General, Anne Baudino Holton, Assistant Attorney General, Denver, Colorado, for Defendants-Appellees

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2002.

Wayne S. Stillman (father) appeals from the order dismissing his complaint for declaratory and injunctive relief. We affirm.

Father is a divorced parent of two children. Upon dissolution of his marriage, he was ordered to pay $837 per month for the support of the children pursuant to the child support guidelines set forth in § 14-10-115, C.R.S. 2002.

Father sought a declaratory judgment concerning the constitutionality of § 14-10-115. He alleged that the statute violated his rights to equal protection, his right to substantive and procedural due process, and his right of privacy and that enforcement of the child support order was an unconstitutional taking of property and an ongoing threat of imprisonment for debt. He sought a permanent injunction preventing the enforcement of the child support obligation.

The trial court made findings on each argument and dismissed the complaint. Father asserts, however, that the court did not adequately address his arguments. We find no error.

Statutes are presumed to be constitutional, and one challenging the validity of a statute has the burden of proving it unconstitutional beyond a reasonable doubt. Watso v. Colo. Dep't of Soc. Servs., 841 P.2d 299 (Colo. 1992). When the underlying facts are undisputed, the trial court may decide the issues as a matter of law. Medina v. State, 35 P.3d 443 (Colo. 2001).

Page 1

Although parents have a right to privacy in matters related to child-rearing and family relationships, this right is not absolute, and the family is subject to regulation in the public interest. People v. Shepard, 983 P.2d 1 (Colo.

1999). The state has a public interest in mitigating the potential harm to children caused by the dissolution of marriage. Section 14-10-104.5, C.R.S. 2002. Thus, a parent has no privacy interest in the process by which child support obligations are determined because support levels are not purely private determinations, but serve a public function and are subject to court approval. See Ga. Dep't of Human Res. v. Sweat, 580 S.E.2d 206 (Ga. 2003); cf. Linda D. v. Fritz C., 38 Wash. App. 288, 687 P.2d 223 (1984) (right to privacy does not encompass right of parent to avoid child support obligation because mother did not successfully use contraception).

Furthermore, the child support guidelines do not infringe upon a fundamental right. See Ga. Dep't of Human Res. v. Sweat, supra. Nor do they discriminate against a suspect class or significantly interfere with a fundamental right. See In re Marriage of McGinley, 172 Or. App. 717, 19 P.3d 954 (2001) Therefore, the rational basis test applies to the evaluation of father's constitutional challenges. See Ga. Dep't of Human Res. v. Sweat, supra; see also P.O.P.S. v. Gardner, 998 F.2d 764 (9th Cir. 1993); cf. Zabbocki v. Redhail, 434 U.S. 374, 98 S.Ct. 673,

54 L.Ed.2d 618 (1978) (state statute forbidding noncustodial parent with child support obligation from marrying without obtaining court permission is subject to strict scrutiny because of the direct interference with family relationships) We agree with the trial court that the state has a legitimate interest in requiring divorced or separated parents to provide child support based on the parties' combined gross incomes.

We also agree with the trial court that father has not shown that he is similarly situated to parents who are married and

have not divorced or separated. Nevertheless, even if we accept the argument that a divorced or separated parent is treated disparately by the imposition of a child support obligation, we conclude that the statutory distinction made by § 14-10-115 does not violate such parent's right to equal protection. A distinction between sets of parents based on marital status is rationally related to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation. In re Marriage of Crocker, 157 Or. App. 651, 971 P.2d 469 (1998), aff'd, 332 Or. 42, 22 P.3d 759 (2001) . As stated in Crocker, the legislature could rationally assume that many divorced or separated parents will no longer be able to work together to make responsible decisions about how to support their children.

Additionally, we conclude that, because it approximates the

amount of parental income that the child would have received in an intact family, application of the guidelines is not arbitrary, capricious, fundamentally unfair, or coercive. See Report of the Colorado Commission on Child Support (1985); cf. In re Marriage of Nimmo, 891 P.2d 1002 (Colo. 1995) (stepparent's income and support of his family unit are not relevant to child support determination because that income and support would not be available if the parents and children were living in an intact household).

Thus, the imposition of a certain amount of child support by application of the child support guidelines does not infringe upon father's constitutional rights. Nor does it result in pecuniary gain to the state because it may result in receipt of federal funds or prevent a custodial parent from seeking state welfare benefits.

The trial court also correctly found that father did not establish a constitutionally protected taking. See Ga. Dep't of Human Res. v. Sweat, supra (child support guidelines merely ensure that noncustodial parents help pay the costs of supporting their children); cf Wellman v. Dep't of Human Servs., 574 A.2d 879 (Me. 1990) (concept of a taking does not apply to scheme requiring unwed father to reimburse state for overpayment to mother of aid to families with dependent children).

Finally, the trial court correctly determined that a finding

Page 4

of contempt for violation of a court order does not subject a parent to imprisonment for failure to pay a debt. See In re Marriage of Nussbeck, 974 P.2d 493 (Colo. 1999) . As the trial court found, § 14-10-115 provides the opportunity for an evidentiary hearing prior to the imposition of a child support order, and so the requirement for procedural due process is satisfied.

Accordingly, father's arguments are not persuasive, and therefore, the trial court properly dismissed his complaint under C.R.C.P. 12(b) (5).

The order is affirmed.

CHIEF JUDGE DAVIDSON and JUDGE WEBB concur.

Page 5

C Order of the District Court, City and County of Denver, *Stillman v. Colorado, Case No. 02CV3778, August 6, 2002*

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO

Plaintiff:

WAYNE S. STILLMAN Case Number: 02 CV 3778

Defendants:

STATE OF COLORADO, BILL OWENS, GOVERNOR Courtroom 8

ORDER

THIS MATTER comes before the Court pursuant to Defendants' motion to dismiss. Plaintiff has filed a pro se complaint seeking declaratory and injunctive relief In essence Plaintiff asks that the provisions of the Uniform Dissolution of Marriage Act that apply to child support including all parts of C.R.S. 14-10-115 be declared unconstitutional. Plaintiff alleges that this statute violates his right to the equal protection of the laws, due process, right or rights of privacy, constitutes an unconstitutional taking of property and constitutes a threat of imprisonment for debt. In order to demonstrate that there is an active case or controversy Plaintiff states that there is an order from the Jefferson County District Court directing that he pay child support in the amount of $837 per month under this statute as support of his two children.

The Court has received the motion and the attached brief, Plaintiff's response and Defendants' reply in support of

their motion to dismiss. The Court has reviewed the case law which has been urged by both sides and determines that oral argument would not be of assistance in deciding this matter.

The Court recognizes that under Rule 12(b) C.R.C.P. that motions to dismiss are disfavored by the courts. It has been held that a motion to dismiss should only be granted if it clearly appears that the plaintiff would not be entitled to any relief under the facts pleaded. National Suret Co . v. Citizens State Bank, 593 P.2d 362 (Colo. 1978). The Court must assume the material allegations of the complaint are true. Schmaltz v. St. Luke's Hospital, 521 P.2d 787 (Colo. 1974) and determine whether under any theory of law Plaintiff would be entitled to relief if relief could be granted under such circumstances the complaint will be determined to be sufficient. Schlitters v. State, 787 P.2d 656 (Colo. App. 1989).

Plaintiff commences all of his causes of action by stating how the child support guidelines violate "his" rights. The statutory law and case law in the state of Colorado recognizes, however,

Page 1

that persons other than parents are involved in assessing child support. "However, the law and policy of this state is that the needs of the children are of paramount importance. Thus, a child has a legal right to support from both parents and both parents have a duty to provide reasonable support for the child." In re C.G.G, 946 P.2d 603, 606 (Colo. App. 1997).

> The law and policy of this state is that the needs of the children are of paramount importance and cannot be altered by the parties. Wright

> v. Wright, 182 Colo. 425, 514 P.2d 73 (1973); see '14-10-112(6), C.R.S. (1987 Repl. Vol. 6B). A child has a legal right to support from both parents and both parents have a duty to provide reasonable support for the child. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989).
>
> This public policy is codified in the child support guidelines. One of the express purposes of the child support guidelines is "to establish as state policy an adequate standard of support for children, subject to the ability of parents to pay." Section 14-10-115(3)(c)(I), C.R.S. (1987 Repl. Vol. 6B). In addition, the guidelines are designed to calculate "child support based upon the parents' combined adjusted gross income estimated to have been allocated to the child if the parents and children were living in an intact household." Section 14-10-1 15(4)(a), C.R.S. (1987 Repl. Vol. 6B).
>
> In Re the Marriage of Miller, 790 P.2d 890, 892 (Colo. App. 1990).

These repeated statements of the public policy concerning the rights of children and the obligations of parents has been reaffirmed most recently in People in the Interest of N.D.S., 5 P.3d 382 (Colo. App. 2000) where the court, citing to Matter of C.G.G., supra, once again plainly stated: "Parents have a duty to provide reasonable support for their children." (5 P.3d 382, 384)

The Court must therefore view Plaintiff's claims not only under the standards for Rule 12(b), C.R.C.P., motions cited above, but also with an eye to the rights of Plaintiff's children and the responsibilities that Plaintiff and his wife have to support those children. Further, because Plaintiff asks that the statute be declared unconstitutional not

only as to him but unconstitutional as applies [sic] to all matters, the Court must view this in terms of all children in Colorado who are entitled to support from their now-divorced parents and all children in Colorado who in the future may be subject to that support obligation by virtue of divorces which have not yet taken place.

Defendant first claims a violation of the right to equal protection. He complains that C.R.S. 14-10-115 burdens him because he is divorced and does not provide him equal rights with parents who are not divorced. He further contends that the statute is not tailored to serve a valid governmental interest.

Page 2

Plaintiff's equal protection claim fails because he is being treated the same as all divorced parents in the state of Colorado. To draw a distinction between parents who are not divorced and parents who remain in an intact marriage is not to draw a valid distinction. Additionally, the legislature itself has stated that those persons who are similarly situated, that is to say both parties to a divorce, have the same obligations. In its legislative declaration found at C.R.S. 14-10-104.5 the Colorado legislature stated, in pertinent part:

> The general assembly recognizes that one of the underlying purposes of this article is to mitigate the potential harm to the spouses and their children and the relationships between the parents and their children caused by the process of legal dissolution of marriage. The general assembly recognizes that when a marriage in which children are involved is dissolved both parties either agree to or are subject to orders

> which contain certain obligations and commitments. The general assembly declares that the honoring and enforcing of those obligations and commitments made by both parties is necessary to maintaining a relationship that is in the best interests of the children of the marriage. In recognition thereof the general assembly hereby declares that both parties should honor and fulfill all the obligations and commitments made between the parties and ordered by the court. (Emphasis supplied.)

By this legislative declaration all parties similarly situated, that is to say divorcing parents, are treated the same under the statute. Therefore, there is no violation of equal protection.

Plaintiff's second claim is for violation of the right of due process. This claim must also fail. In enacting the child support guidelines found at 14-10-115, C.R.S., the legislature has set up a presumptive set of guidelines which may be modified by the individual court based on appropriate factual findings. The statute itself includes the following language: "Courts may deviate from the guideline where its application would be inequitable, unjust, or inappropriate." (14-10-115(3)(a)) The opportunity for hearings are provided for persons who are divorcing to produce evidence which would demonstrate that the application of the guidelines would fall into one of those categories.

Here again, Plaintiff has overlooked the purpose of the child support guidelines which is to address a critical state interest, the support of children in divorce situations. Certainly a sliding scale of support obligations based upon both parents' gross income which is subject to modification at a hearing before a court in order to provide for the support

of minor children of divorcing parents is a legitimate state interest. The statute itself does not address a fundamental right nor does it place plaintiff in a suspect class. The statute is narrowly tailored to address a significant state interest and the Plaintiff's second claim, therefore, fails.

Plaintiff's third claim is that the statute violates his "right to privacy" by requiring him to pay an amount "in excess of that required to meet the children's basic needs, and therefore the

statute impermissibly interferes with parental decisions regarding financial expenditures on children." On its face Plaintiff's claim fails. The guidelines are applicable across the board and are set up regardless of what the gross monthly income of the various parents are. They apply equally and they apply for a legitimate public interest. The fact that a divorced parent has had certain statutory minimums set up to ensure support for children of divorced parties in no way invades Plaintiff's privacy.

Plaintiff's fourth claim is that the statute is an unconstitutional taking of property. The constitutional provisions Plaintiff refers to, Article II, Section 14 and Article II, Section 15 of the Colorado Constitution relate to the taking of real property and water rights associated with real property. Plaintiff has not alleged that there has been any taking of any of his real property or rights in water use and therefore his claim cannot stand. Additionally, there is no taking. Under the statute there is merely a mechanism established to enforce a parent's obligation to support his children.

Finally, Plaintiff claims that there is a threat of imprisonment for debt under this statute which would be uncon-

stitutional. The Colorado Supreme Court has addressed this issue in the case In Re Nussbeck, 974 P.2d 493 (Colo. 1999). In that case which involved the refusal of a divorced spouse to pay maintenance and child support the Supreme Court pointed out that the usual method of enforcing an order in a divorce action is by means of commitment for contempt of court after notice to the obligated spouse and demand for payment. (974 P.2d at 498) In its opinion the Supreme Court made reference to the earlier opinion of Harvey v. Harvey, 384 P.2d 265 (1963). By this observation the Supreme Court indicated that one is not subject to imprisonment merely by the failure to make a payment. The court went on to point out:

> Therefore, contrary to husband's argument, he was not imprisoned for failing to pay a judgment or a debt. Rather, husband is subject to imprisonment because of his persistent and willful refusal to obey the temporary orders entered under husband's stipulation, which required monthly payments of child support and maintenance to wife of $330. Husband's argument taken to its full extent, would immunize from contempt proceedings and court orders all those who fail to comply with trial court orders due solely to the automatic entry of judgment by operation of § 14-10-122. Such a result would be absurd and would find no basis in the text or context of the statute.
>
> In Re Marriage of Nussbeck, 974 P.2d at 500-501.

Therefore, Plaintiff's fifth claim has been previously addressed by the Colorado Supreme Court and the ruling was that such potential is not an imprisonment for debt. The

Court would also note that the subsection of the Colorado statutes that Plaintiff attacks gives the opportunity for adjustments to the schedule for extraordinary circumstances, extraordinary medical or health insurance expenses and, of course, gives the opportunity for modification should there be a change in circumstances.

Page 4

For all of these reasons the Plaintiff's fifth claim must therefore fail.

The Court has viewed the Motion to Dismiss in light of the standards under Rule 12(b) articulated above. The Court finds that the Motion to Dismiss is well taken and each of Plaintiff's claims is ordered dismissed.

Done this 6 day of August, 2002.

BY THE COURT:

H. Jeffery Bayless
District Judge

Page 5

D United States Constitution amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

E United States Constitution amend. XIV § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

F Colorado Constitution, Article II, § 3

Section 3. Inalienable rights.

All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring,

possessing and protecting property; and of seeking and obtaining their safety and happiness.

G Colorado Constitution, Article II, § 12

Section 12. No imprisonment for debt.

No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.

H Colorado Constitution, Article II, § 14

Section 14. Taking private property for private use.

Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.

I Colorado Constitution, Article II, § 15

Section 15. Taking property for public use - compensation, how ascertained.

Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required

by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

J Colorado Constitution, Article II, § 25

Section 25. Due process of law.

No person shall be deprived of life, liberty or property, without due process of law.

K Colorado Revised Statutes, § 14-6-101(1)

14-6-101. Nonsupport of spouse and children - penalty.

(1) Any person who willfully neglects, fails, or refuses to provide reasonable support and maintenance for his spouse or for his children under eighteen years of age, whether natural, adopted, or whose parentage has been judicially determined, or who willfully fails, refuses, or neglects to provide proper care, food, and clothing in case of sickness for his spouse or such children or any such children being legally the inmates of a state or county home or school for children in this state, or who willfully fails or refuses to pay to a trustee, who may be appointed by the court to receive such payment, or to the board of control of such home or

school the reasonable cost of keeping such children in said home, or any person, being the father or mother of children under eighteen years of age, who leaves such children with intent to abandon such children, or any man who willfully neglects, fails, or refuses to provide proper care, food, and clothing to the mother of his child during childbirth and attendant illness is guilty of a class 5 felony. It shall be an affirmative defense, as defined in section 18-1-407, C.R.S., to a prosecution under this section that owing to physical incapacity or other good cause the defendant is unable to furnish the support, care, and maintenance required by this section. No child shall be deemed to lack proper care for the sole reason that he is being provided remedial treatment in accordance with section 19-3-103, C.R.S.

L Colorado Revised Statutes, § 14-10-104.5

14-10-104.5. Legislative declaration.

The general assembly recognizes that it is in the best interests of the parties to a marriage in which a dissolution has been granted and in which there are children of the marriage for the parties to be able to resolve disputes that arise subsequent to the dissolution in an amicable and fair manner. The general assembly further recognizes that, in most cases, it is in the best interests of the children of the marriage to have a relationship with both parents and that, in most cases, it is the parents' right to have a relationship with their children. The general assembly emphasizes that one of the underlying purposes of this article is to mitigate the potential harm to the spouses and their children and the relationships between the parents and their children caused by the process of legal dissolution of marriage. The general assembly recognizes that when a marriage in which

children are involved is dissolved both parties either agree to or are subject to orders which contain certain obligations and commitments. The general assembly declares that the honoring and enforcing of those obligations and commitments made by both parties is necessary to maintaining a relationship that is in the best interest of the children of the marriage. In recognition thereof the general assembly hereby declares that both parties should honor and fulfill all of the obligations and commitments made between the parties and ordered by the court.

M Colorado Revised Statutes, § 14-10-115

14-10-115. Child support - guidelines - schedule of basic child support obligations.

(1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support and may order an amount determined to be reasonable under the circumstances for a time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the respondent, whichever date is latest, and prior to the entry of the support order, without regard to marital misconduct, after considering all relevant factors including:

(a) The financial resources of the child;

(b) The financial resources of the custodial parent;

(c) The standard of living the child would have enjoyed had the marriage not been dissolved;

(d) The physical and emotional condition of the child and his educational needs; and

(e) The financial resources and needs of the noncustodial parent.

(1.5) (a) For child support orders entered prior to July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates when the child attains nineteen years of age unless one or more of the following conditions exist:

(I) The parties agree otherwise in a written stipulation after July 1, 1991.

(II) If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen.

(III) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation, unless there is an order for postsecondary education, in which case support continues through postsecondary education as provided in subparagraph (I) of paragraph (b) of this subsection (1.5). A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(b) (I) If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into account the resources

of each parent and the child. In determining the amount of each parent's contribution to the costs of a program of postsecondary education for a child, the court shall be limited to an amount not to exceed the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (10) of this section for the number of children receiving postsecondary education. The amount of contribution which each parent is ordered to pay pursuant to this paragraph (b) shall be subtracted from the amount of each parent's gross income, respectively, prior to calculating the basic child support obligation for any remaining children pursuant to subsection (10) of this section. In no case shall the court issue orders providing for both child support and postsecondary education to be paid for the same time period for the same child regardless of the age of the child. Either parent or the child may move for such an order at any time before the child attains the age of twenty-one years. Either a child seeking an order for postsecondary education expenses or on whose behalf postsecondary education expenses are sought, or the parent from whom the payment of postsecondary education expenses are sought, may request that the court order the child and such parent to seek mediation prior to a hearing on the issue of postsecondary education expenses. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. The court may order the parties to seek mediation if the court finds that mediation is appropriate. Postsecondary education includes college and vocational education programs. If such an order is entered, the parents shall contribute to the total sum determined by the court in proportion to their adjusted gross incomes as defined in subparagraph (II) of paragraph (a) of subsection (10) of this section. The order for postsecondary education support may not extend beyond the earlier of the child's twenty-first birthday or the completion of an undergraduate degree. The court may

order the support paid directly to the educational institution, to the child, or in such other fashion as is appropriate to support the education of the child. If the child resides in the home of one parent while attending school or during periods of time in excess of thirty days when school is not in session, the court may order payments from one parent to the other for room and board until the child attains the age of nineteen. A child shall not be considered emancipated solely by reason of living away from home while in postsecondary education.

(II) If the court orders support pursuant to subparagraph (I) of this paragraph (b), the court or delegate child support enforcement unit may also order that the parents provide health insurance for the child or pay medical expenses of the child or both for the duration of such order. Such order shall provide that these expenses be paid in proportion to their adjusted gross incomes as defined in subparagraph (II) of paragraph (a) of subsection (10) of this section. The court or delegate child support enforcement unit shall order a parent to provide health insurance if the child is eligible for coverage as a dependent on that parent's insurance policy or if health insurance coverage for the child is available at reasonable cost.

(c) This subsection (1.5) shall apply to all child support obligations established or modified as a part of any proceeding, including but not limited to articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., prior to July 1, 1997. This subsection (1.5) shall not apply to child support orders established on or after July 1, 1997, which shall be governed by subsection (1.6) of this section.

(c.5) An order for postsecondary education expenses entered between July 1, 1991, and July 1, 1997, may be modified pursuant to this subsection (1.5) to provide for postsec-

ondary education expenses subject to the statutory provisions for determining the amount of a parent's contribution to the costs of postsecondary education, the limitations on the amount of a parent's contribution, and the changes to the definition of postsecondary education consistent with this section as it existed on July 1, 1994. An order for child support entered prior to July 1, 1997, that does not provide for postsecondary education expenses shall not be modified pursuant to this subsection (1.5).

(d) Postsecondary education support may be established or modified in the same manner as child support under this article.

(e) For the purposes of this section, "postsecondary education support" means support for the following expenses associated with attending a college, university, or vocational education program: Tuition, books, and fees.

(1.6) For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates when the child attains nineteen years of age unless one or more of the following conditions exist:

(a) The parties agree otherwise in a written stipulation after July 1, 1997.

(b) If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen.

(c) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support

upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(1.7) Nothing in subsection (1.5) or (1.6) of this section shall preclude the parties from agreeing in a written stipulation or agreement on or after July 1, 1997, to continue child support beyond the age of nineteen or to provide for postsecondary education expenses for a child and to set forth the details of the payment of such expenses. If such stipulation or agreement is approved by the court and made part of a decree of dissolution of marriage or legal separation, the terms of such agreement shall be enforced as provided in section 14-10-112.

(2) (Deleted by amendment. L. 96, p. 594, ? 7, effective July 1, 1996.)

(3) (a) In any action to establish or modify child support, whether temporary or permanent, the child support guideline as set forth in this section shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guideline where its application would be inequitable, unjust, or inappropriate. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation and the presumed amount under the guidelines without a deviation. These reasons may include, but are not limited to, the extraordinary medical expenses incurred for treatment of either parent or a current spouse, extraordinary costs associated with parenting time, the gross disparity in income between the parents, the ownership by a parent of a substantial nonincome producing asset, consistent overtime not considered in gross income under sub-subparagraph (C) of subparagraph (I) of paragraph (a) of subsection (7) of this section, or income from employment that is in addition to a full-time job or

that results in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment. The existence of a factor enumerated in this section does not require the court to deviate from the guidelines, but is a factor to be considered in the decision to deviate. The court may deviate from the guidelines even if no factor enumerated in this section exists.

(b) (I) Stipulations presented to the court shall be reviewed by the court for approval. No hearing shall be required; however, the court shall use the guideline to review the adequacy of child support orders negotiated by the parties as well as the financial affidavit which fully discloses the financial status of the parties as required for use of the guideline.

(II) When a child support order is entered or modified, the parties may agree or the court may require the parties to exchange financial information, including verification of insurance and its costs, pursuant to paragraph (c) of subsection (7) of this section and other appropriate information once a year or less often, by regular mail, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support guideline forms in exchanging such financial information. Such forms shall be included with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines, the parties shall furnish statements of explanation, which shall be included with the forms and shall be filed with the court. The court shall review the agreement pursuant to this subparagraph (II) and inform the parties by regular mail whether or not additional or corrected information is needed, or that the modification is granted, or that the modification is denied. If the parties cannot

agree, no modification pursuant to this subparagraph (II) shall be entered; however, either party may move for or the court may schedule, upon its own motion, a modification hearing.

(III) Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support guideline forms, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update such financial information pursuant to this subparagraph (III) in circumstances where the noncustodial parent has failed to exercise parenting time rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a protection order on the part of the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

(c) The child support guideline has the following purposes:

(I) To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(II) To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(III) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

(3.5) All child support orders entered pursuant to this article shall provide the social security numbers and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses.

(4) The child support guideline does the following:

(a) Calculates child support based upon the parents' combined adjusted gross income estimated to have been allocated to the child if the parents and children were living in an intact household;

(b) Adjusts the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs;

(c) Allocates the amount of child support to be paid by each parent based upon physical care arrangements.

(5) The child support guideline shall be used with standardized child support guideline forms to be issued by the supreme court, which forms shall be periodically updated when necessary.

(6) The child support guideline may be used by the parties as the basis for periodic updates of child support obligations.

(7) Determination of income. (a) For the purposes of the guideline specified in subsections (3) to (14) of this section, "income" means actual gross income of a parent, if employed to full capacity, or potential income, if unemployed or underemployed. Gross income of each parent

shall be determined according to the following guidelines:

(I) (A) "Gross income" includes income from any source and includes, but is not limited to, income from salaries; wages, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater; commissions; payments received as an independent contractor for labor or services; bonuses; dividends; severance pay; pensions and retirement benefits, including but not limited to those paid pursuant to article 64 of title 22, C.R.S., articles 51, 54, 54.5, 54.6, and 54.7 of title 24, C.R.S., and article 30 of title 31, C.R.S.; royalties; rents; interest; trust income; annuities; capital gains; any moneys drawn by a self-employed individual for personal use; social security benefits, including social security benefits actually received by a parent as a result of the disability of that parent or as the result of the death of the minor child's stepparent, but not including social security benefits received by a minor child or on behalf of a minor child as a result of the death or disability of a stepparent of the child; workers' compensation benefits; unemployment insurance benefits; disability insurance benefits; funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; monetary gifts; monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office; taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies; and alimony or maintenance received. "Gross income" does not include child support payments received.

(B) "Gross income" does not include benefits received from

means-tested public assistance programs, including but not limited to assistance provided under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., supplemental security income, food stamps, and general assistance.

(C) "Gross income" includes overtime pay only if the overtime is required by the employer as a condition of employment. "Gross income" does not include income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment.

(II) (A) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income.

(B) "Ordinary and necessary expenses" does not include amounts allowable by the internal revenue service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(III) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

(b) (I) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parents owe

a joint legal responsibility.

(I.5) If a noncustodial parent who owes past-due child support is unemployed and not incapacitated and has an obligation of support to a child receiving assistance pursuant to part 7 of article 2 of title 26, C.R.S., the court or delegate child support enforcement unit may order such parent to pay such support in accordance with a plan approved by the court or to participate in work activities. Work activities may include one or more of the following:

(A) Private or public sector employment;

(B) Job search activities;

(C) Community service;

(D) Vocational training; or

(E) Any other employment-related activities available to that particular individual.

(II) Repealed.

(III) For the purposes of this section, a parent shall not be deemed "underemployed" if:

(A) The employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or

(B) The employment is a good faith career choice which is not intended to deprive a child of support and does not unreasonably reduce the support available to a child; or

(C) The parent is enrolled in an educational program which is reasonably intended to result in a degree or certification within a reasonable period of time and which will result in a higher income, so long as the educational program is a good

faith career choice which is not intended to deprive the child of support and which does not unreasonably reduce the support available to a child.

(c) Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer data base maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (7).

(d) The amount of child support actually paid by a parent with an order for support of other children shall be deducted from that parent's gross income. For the purposes of this section, "other children" means children who are not the subject of this particular child support determination.

(d.5) (I) At the time of the initial establishment of a child support order, or in any proceeding to modify a support order, if a parent is also legally responsible for the support of other children born prior to the children who are the subject of the child support order and for whom the parents do not share joint legal responsibility, an adjustment shall be made revising such parent's income prior to calculating the basic child support obligation for the children who are the subject of the support order if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the guidelines listed in this section. An

amount equal to the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (10) of this section which would represent a support obligation based only upon the responsible parent's gross income, without any other adjustments, for the number of such other children for whom such parent is also responsible shall be subtracted from the amount of such parent's gross income prior to calculating the basic child support obligation based on both parents' gross income as provided in subsection (10) of this section.

(II) The adjustment pursuant to this paragraph (d.5), based on the responsibility to support other children, shall not be made to the extent that the adjustment contributes to the calculation of a support order lower than a previously existing support order for the children who are the subject of the modification hearing at which an adjustment is sought.

(e) Repealed and deleted by amendment, L. 92, pp. 198, 166, ? ? 3, 1, effective August 1, 1992.

(8) Shared physical care. For the purposes of this section, "shared physical care" means that each parent keeps the children overnight for more than ninety-two overnights each year and that both parents contribute to the expenses of the children in addition to the payment of child support.

(9) Split physical care. For the purposes of this section, "split physical care" means that each parent has physical care of at least one of the children by means of that child or children residing with that parent the majority of the time.

(10) Basic child support obligations. (a) (I) The basic child support obligation shall be determined using the schedule of basic child support obligations contained in paragraph (b) of this subsection (10). The basic child support obliga-

tion shall be divided between the parents in proportion to their adjusted gross incomes.

(II) (A) The category entitled "combined gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. For the purposes of subsections (3) to (14) of this section, "adjusted gross income" means gross income less preexisting child support obligations and less alimony or maintenance actually paid by a parent. For combined gross income amounts falling between amounts shown in the schedule, basic child support amounts shall be extrapolated. The category entitled "number of children due support" in the schedule means children for whom the parents share joint legal responsibility and for whom support is being sought.

(B) Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is less than eight hundred fifty dollars, a child support payment of fifty dollars per month shall be required of the obligor. The minimum order of fifty dollars shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(C) Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is eight hundred fifty dollars or more, but in which the parent with the least number of overnights per year with the child has a monthly adjusted gross income of less than one thousand eight hundred fifty dollars, the court or delegate child

support enforcement unit, pursuant to section 26-13.5-105 (4), C.R.S., shall perform a low-income adjustment calculation of child support as follows: The court or delegate child support enforcement unit shall determine each parent's monthly adjusted gross income, as that term is defined in sub-subparagraph (A) of this subparagraph (II). Based upon the parents' combined monthly adjusted gross incomes, the court or delegate child support enforcement unit shall determine the monthly basic child support obligation, using the schedule of basic child support obligations set forth in paragraph (b) of this subsection (10) and shall determine each parent's presumptive proportionate share of said obligation. The court or delegate child support enforcement unit shall then adjust the income of the parent with the fewest number of overnights per year with the child by subtracting nine hundred dollars from that parent's monthly adjusted gross income. The court shall multiply the resulting amount by a factor of forty percent. The product of the multiplication shall be added to the following basic minimum child support amount as additional minimum support, unless the product of the multiplication amount is zero or a negative figure, in which case the court shall add zero to the following basic minimum child support amount: Seventy-five dollars for one child; one hundred fifty dollars for two children; two hundred twenty-five dollars for three children; two hundred seventy-five dollars for four children; three hundred twenty-five dollars for five children; and three hundred fifty dollars for six or more children. The court or delegate child support enforcement unit shall compare the product of this addition to the parent's presumptive proportionate share of the monthly basic support obligation determined previously from the schedule of basic child support obligations. The lesser of the two amounts shall be the basic monthly support obligation to be paid by the low-income parent, as adjusted by the low-

income parent's proportionate share of the work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (11) to (13.5) of this section. The low-income adjustment shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(D) In any circumstance in which the obligor's monthly adjusted gross income is less than eight hundred fifty dollars, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay fifty dollars per month in child support. The minimum order of fifty dollars shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(E) The judge may use discretion to determine child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the guideline; except that the presumptive basic child support obligation shall not be less than it would be based on the highest level of adjusted gross income set forth in the guideline.

(b) Schedule of basic child support obligations:

[To fit on the page, the following abbreviations are made:
"CO GR INC" is "COMBINED GROSS INCOME";
"CH" is "CHILD" or "CHILDREN".]

CO GR INC	ONE CH	TWO CH	THREE CH	FOUR CH	FIVE CH	SIX OR MORE CH
100	ORDER OF $50 PER MONTH					
200						
300						
400						
500						
600						
700						
800						
850	184	269	319	352	382	409
900	193	282	334	369	400	428
950	202	294	349	386	418	447
1000	211	307	364	402	436	467
1050	220	320	379	419	455	486
1100	228	333	395	436	473	506
1150	237	346	410	453	491	525

1200	246	359	425	470	509	545
1250	255	372	440	487	528	565
1300	264	385	456	504	546	584
1350	273	397	471	520	564	603
1400	281	410	486	537	582	622
1450	290	422	500	553	599	641
1500	298	435	515	569	617	660
1550	307	447	530	586	635	679
1600	315	460	545	602	652	698
1650	324	472	559	618	670	717
1700	333	485	574	634	688	736
1750	341	497	589	651	705	755
1800	350	510	604	667	723	774
1850	358	522	619	683	741	793
1900	367	535	633	700	759	812
1950	375	547	648	716	776	830
2000	383	558	661	730	792	847
2050	391	570	674	745	807	864
2100	399	581	687	759	823	881
2150	407	592	700	774	839	898
2200	415	604	714	789	855	915
2250	423	615	727	803	871	931
2300	431	626	740	818	886	948
2350	439	638	753	832	902	965
2400	447	649	766	847	918	982
2450	455	660	779	861	934	999
2500	462	672	793	876	949	1016
2550	470	683	806	890	965	1033
2600	479	694	819	905	981	1050
2650	487	706	833	920	997	1067
2700	495	718	846	935	1013	1084
2750	503	729	859	950	1029	1101
2800	511	741	873	964	1045	1119
2850	519	752	886	979	1061	1136
2900	527	763	898	993	1076	1151

2950	533	772	910	1005	1089	1166
3000	540	782	921	1017	1103	1180
3050	547	792	932	1030	1116	1194
3100	554	801	943	1042	1130	1209
3150	560	811	954	1054	1143	1223
3200	567	821	965	1067	1156	1237
3250	574	831	977	1080	1171	1253
3300	581	841	989	1093	1185	1268
3350	589	851	1002	1107	1200	1284
3400	596	862	1014	1120	1214	1299
3450	603	872	1026	1133	1229	1315
3500	610	882	1038	1147	1243	1330
3550	617	892	1050	1160	1258	1346
3600	624	903	1062	1173	1272	1361
3650	631	913	1074	1187	1287	1377
3700	638	923	1086	1200	1301	1392
3750	645	934	1098	1214	1315	1408
3800	652	944	1110	1227	1330	1423
3850	660	954	1122	1240	1344	1439
3900	667	964	1135	1254	1359	1454
3950	673	973	1145	1266	1372	1468
4000	677	980	1153	1274	1381	1478
4050	682	987	1161	1283	1391	1488
4100	686	993	1169	1292	1400	1498
4150	691	1000	1177	1301	1410	1509
4200	695	1006	1185	1310	1420	1519
4250	700	1013	1193	1318	1429	1529
4300	704	1020	1201	1327	1439	1539
4350	708	1026	1209	1336	1448	1550
4400	713	1033	1217	1345	1458	1560
4450	717	1039	1225	1354	1467	1570
4500	722	1046	1233	1362	1477	1580
4550	726	1053	1241	1371	1486	1590
4600	731	1059	1249	1380	1496	1601
4650	735	1066	1257	1389	1505	1611
4700	739	1071	1262	1395	1512	1618

4750	742	1075	1267	1400	1517	1623
4800	745	1079	1271	1405	1523	1629
4850	748	1083	1276	1410	1528	1635
4900	751	1088	1280	1415	1533	1641
4950	755	1092	1285	1420	1539	1647
5000	758	1096	1289	1425	1544	1652
5050	761	1100	1294	1430	1550	1658
5100	764	1105	1298	1435	1555	1664
5150	768	1109	1303	1440	1560	1670
5200	771	1113	1307	1445	1566	1676
5250	774	1117	1312	1450	1571	1681
5300	777	1122	1316	1455	1577	1687
5350	781	1126	1321	1460	1582	1693
5400	784	1130	1326	1465	1588	1699
5450	787	1135	1331	1470	1594	1705
5500	790	1139	1336	1476	1600	1712
5550	792	1143	1341	1482	1606	1718
5600	795	1147	1346	1487	1612	1725
5650	798	1152	1351	1493	1618	1731
5700	801	1156	1356	1498	1624	1738
5750	804	1160	1361	1504	1630	1744
5800	807	1164	1365	1509	1636	1750
5850	809	1168	1370	1514	1641	1756
5900	812	1172	1375	1520	1647	1762
5950	815	1176	1380	1525	1653	1769
6000	818	1180	1385	1530	1659	1775
6050	820	1184	1390	1536	1664	1781
6100	823	1188	1394	1541	1670	1787
6150	826	1193	1400	1547	1677	1794
6200	831	1199	1407	1555	1686	1804
6250	836	1206	1415	1563	1695	1813
6300	840	1212	1422	1572	1704	1823
6350	845	1219	1430	1580	1713	1833
6400	849	1225	1437	1588	1722	1842
6450	854	1232	1445	1597	1731	1852
6500	858	1238	1452	1605	1740	1861

6550	863	1245	1460	1613	1749	1871
6600	868	1251	1467	1621	1758	1881
6650	872	1258	1475	1630	1767	1890
6700	877	1264	1482	1638	1775	1900
6750	882	1271	1491	1647	1785	1910
6800	887	1278	1499	1656	1795	1921
6850	892	1285	1507	1665	1805	1932
6900	897	1293	1515	1675	1815	1942
6950	902	1300	1524	1684	1825	1953
7000	907	1307	1532	1693	1835	1963
7050	912	1314	1540	1702	1845	1974
7100	917	1321	1549	1711	1855	1985
7150	922	1328	1557	1720	1865	1995
7200	927	1336	1565	1729	1875	2006
7250	932	1343	1573	1738	1884	2016
7300	937	1349	1581	1747	1893	2026
7350	942	1356	1588	1755	1902	2036
7400	946	1362	1596	1763	1912	2045
7450	951	1369	1603	1772	1921	2055
7500	955	1375	1611	1780	1930	2065
7550	960	1382	1619	1789	1939	2075
7600	965	1389	1626	1797	1948	2084
7650	969	1395	1634	1805	1957	2094
7700	974	1402	1641	1814	1966	2104
7750	979	1408	1649	1822	1975	2113
7800	983	1415	1657	1830	1984	2123
7850	988	1422	1664	1839	1993	2133
7900	993	1428	1672	1847	2002	2143
7950	997	1435	1679	1856	2011	2152
8000	1002	1441	1687	1864	2021	2162
8050	1006	1448	1694	1872	2030	2172
8100	1011	1454	1702	1881	2039	2181
8150	1016	1461	1710	1889	2048	2191
8200	1020	1468	1717	1898	2057	2201
8250	1025	1474	1725	1906	2066	2211
8300	1030	1481	1732	1914	2075	2220

8350	1034	1487	1740	1923	2084	2230
8400	1039	1494	1748	1931	2093	2240
8450	1043	1501	1755	1939	2102	2250
8500	1048	1507	1763	1948	2111	2259
8550	1053	1514	1770	1956	2121	2269
8600	1057	1520	1778	1965	2130	2279
8650	1062	1527	1785	1973	2139	2288
8700	1066	1533	1793	1981	2148	2298
8750	1070	1539	1800	1989	2157	2308
8800	1075	1546	1808	1998	2166	2317
8850	1079	1552	1815	2006	2175	2327
8900	1083	1558	1823	2014	2184	2336
8950	1088	1565	1830	2023	2193	2346
9000	1092	1571	1838	2031	2202	2356
9050	1096	1577	1845	2039	2211	2365
9100	1101	1583	1853	2048	2220	2375
9150	1105	1590	1860	2056	2228	2384
9200	1110	1596	1868	2064	2237	2394
9250	1114	1602	1875	2072	2246	2404
9300	1118	1609	1883	2081	2255	2413
9350	1123	1615	1890	2089	2264	2423
9400	1127	1621	1898	2097	2273	2433
9450	1131	1628	1905	2106	2282	2442
9500	1136	1634	1913	2114	2291	2452
9550	1140	1640	1920	2122	2300	2461
9600	1144	1647	1928	2130	2309	2471
9650	1149	1653	1935	2139	2318	2481
9700	1153	1659	1943	2147	2327	2490
9750	1157	1666	1950	2155	2336	2500
9800	1162	1672	1958	2164	2345	2510
9850	1166	1678	1965	2172	2354	2519
9900	1170	1685	1973	2180	2363	2529
9950	1175	1691	1981	2188	2372	2538
10000	1179	1697	1988	2197	2381	2548
10050	1183	1703	1995	2204	2389	2557
10100	1187	1709	2002	2212	2398	2565

101501191	1715	2008	2219	2406	2574
102001195	1720	2015	2227	2414	2583
102501199	1726	2022	2234	2422	2592
103001203	1732	2029	2242	2430	2601
103501207	1738	2036	2250	2439	2609
104001211	1744	2043	2257	2447	2618
104501215	1749	2050	2265	2455	2627
105001219	1755	2056	2272	2463	2636
105501223	1761	2063	2280	2471	2644
106001227	1767	2070	2288	2480	2653
106501231	1773	2077	2295	2488	2662
107001235	1778	2084	2303	2496	2671
107501239	1784	2091	2310	2504	2680
108001243	1790	2098	2318	2513	2688
108501247	1796	2104	2325	2521	2697
109001251	1802	2111	2333	2529	2706
109501255	1808	2118	2341	2537	2715
110001259	1813	2125	2348	2545	2724
110501263	1819	2132	2356	2554	2732
111001267	1825	2139	2363	2562	2741
111501271	1831	2146	2371	2570	2750
112001275	1837	2152	2378	2578	2759
112501279	1842	2159	2386	2586	2768
113001283	1848	2166	2394	2595	2776
113501287	1854	2173	2401	2603	2785
114001291	1860	2180	2409	2611	2794
114501295	1866	2187	2417	2619	2803
115001299	1871	2194	2424	2628	2812
115501303	1877	2201	2432	2636	2821
116001307	1883	2208	2440	2644	2830
116501311	1889	2215	2447	2653	2838
117001315	1895	2222	2455	2661	2847
117501319	1900	2229	2463	2669	2856
118001322	1906	2235	2470	2678	2865
118501326	1912	2242	2478	2686	2874
119001330	1918	2249	2486	2694	2883

119501334	1923	2256	2493	2703	2892
120001338	1929	2263	2501	2711	2901
120501342	1935	2270	2508	2719	2909
121001346	1940	2276	2515	2726	2917
121501349	1945	2283	2522	2734	2925
122001353	1951	2289	2529	2742	2934
122501357	1956	2295	2536	2749	2942
123001360	1961	2302	2543	2757	2950
123501364	1967	2308	2551	2765	2958
124001367	1972	2315	2558	2772	2966
124501371	1977	2321	2565	2780	2975
125001375	1983	2327	2572	2788	2983
125501378	1988	2334	2579	2795	2991
126001382	1993	2340	2586	2803	2999
126501386	1998	2347	2593	2811	3007
127001389	2004	2353	2600	2818	3016
127501393	2009	2359	2607	2826	3024
128001397	2014	2366	2614	2834	3032
128501400	2020	2373	2622	2842	3041
129001405	2026	2380	2630	2851	3050
129501409	2032	2387	2638	2859	3059
130001413	2038	2394	2646	2868	3069
130501417	2044	2402	2654	2877	3078
131001421	2050	2409	2662	2885	3087
131501425	2056	2416	2670	2894	3096
132001429	2062	2423	2678	2902	3106
132501433	2068	2430	2685	2911	3115
133001437	2074	2437	2693	2920	3124
133501441	2080	2445	2701	2928	3133
134001445	2086	2452	2709	2937	3142
134501449	2092	2459	2717	2945	3152
135001453	2098	2466	2725	2954	3161
135501457	2104	2473	2733	2963	3170
136001461	2110	2481	2741	2971	3179
136501465	2116	2488	2749	2980	3189
137001469	2122	2495	2757	2989	3198

137501473	2128	2502	2765	2997	3207
138001477	2134	2509	2773	3006	3216
138501481	2140	2517	2781	3014	3225
139001485	2146	2524	2789	3023	3235
139501489	2152	2531	2797	3032	3244
140001493	2158	2538	2805	3040	3253
140501497	2164	2545	2813	3049	3262
141001501	2170	2553	2821	3058	3272
141501505	2176	2560	2829	3066	3281
142001509	2181	2567	2836	3075	3290
142501514	2187	2574	2844	3083	3299
143001518	2193	2581	2852	3092	3308
143501522	2199	2589	2860	3101	3318
144001526	2205	2596	2868	3109	3327
144501530	2211	2603	2876	3118	3336
145001534	2217	2610	2884	3126	3345
145501538	2223	2617	2892	3135	3354
146001542	2229	2624	2900	3144	3364
146501546	2235	2632	2908	3152	3373
147001550	2241	2639	2916	3161	3382
147501554	2247	2646	2924	3170	3391
148001558	2253	2653	2932	3178	3401
148501562	2259	2660	2940	3187	3410
149001566	2265	2668	2948	3195	3419
149501570	2271	2675	2956	3204	3428
150001574	2277	2682	2964	3213	3437
150501578	2283	2689	2972	3221	3447
151001582	2289	2696	2980	3230	3456
151501586	2295	2704	2987	3238	3465
152001590	2301	2711	2995	3247	3474
152501594	2307	2718	3003	3256	3484
153001598	2313	2725	3011	3264	3493
153501602	2319	2732	3019	3273	3502
154001606	2325	2740	3027	3282	3511
154501610	2330	2746	3034	3289	3519
155001613	2334	2750	3039	3294	3525

155501615	2338	2755	3044	3300	3531
156001618	2342	2759	3049	3305	3537
156501621	2346	2764	3054	3311	3542
157001624	2350	2768	3059	3316	3548
157501626	2353	2773	3064	3322	3554
158001629	2357	2778	3069	3327	3560
158501632	2361	2782	3074	3332	3566
159001634	2365	2787	3079	3338	3572
159501637	2369	2791	3084	3343	3577
160001640	2373	2796	3089	3349	3583
160501643	2377	2800	3094	3354	3589
161001645	2381	2805	3099	3360	3595
161501648	2385	2809	3104	3365	3601
162001651	2389	2814	3109	3371	3607
162501654	2392	2818	3114	3376	3612
163001656	2396	2823	3119	3381	3618
163501659	2400	2828	3124	3387	3624
164001662	2404	2832	3129	3392	3630
164501665	2408	2837	3134	3398	3636
165001667	2412	2841	3140	3403	3641
165501670	2416	2846	3145	3409	3647
166001673	2420	2850	3150	3414	3653
166501675	2424	2855	3155	3420	3659
167001678	2428	2859	3160	3425	3665
167501681	2431	2864	3165	3430	3671
168001684	2435	2868	3170	3436	3676
168501686	2439	2873	3175	3441	3682
169001689	2443	2878	3180	3447	3688
169501692	2447	2882	3185	3452	3694
170001695	2451	2887	3190	3458	3700
170501697	2455	2891	3195	3463	3706
171001700	2459	2896	3200	3469	3711
171501703	2463	2900	3205	3474	3717
172001705	2467	2905	3210	3479	3723
172501708	2471	2909	3215	3485	3729
173001711	2474	2914	3220	3490	3735

173501714	2478	2918	3225	3496	3740
174001716	2482	2923	3230	3501	3746
174501719	2486	2928	3235	3507	3752
175001722	2490	2932	3240	3512	3758
175501725	2494	2937	3245	3518	3764
176001727	2498	2941	3250	3523	3770
176501730	2502	2946	3255	3528	3775
177001733	2506	2950	3260	3534	3781
177501736	2510	2955	3265	3539	3787
178001738	2513	2959	3270	3545	3793
178501741	2517	2964	3275	3550	3799
179001744	2521	2968	3280	3556	3805
179501746	2525	2973	3285	3561	3810
180001749	2529	2978	3290	3567	3816
180501752	2533	2982	3295	3572	3822
181001755	2537	2987	3300	3577	3828
181501757	2541	2991	3305	3583	3834
182001760	2545	2996	3310	3588	3839
182501763	2549	3000	3315	3594	3845
183001766	2552	3005	3320	3599	3851
183501768	2556	3009	3325	3605	3857
184001771	2560	3014	3330	3610	3863
184501774	2564	3018	3335	3616	3869
185001776	2568	3023	3340	3621	3874
185501779	2572	3027	3345	3626	3880
186001782	2576	3032	3350	3632	3886
186501785	2580	3037	3355	3637	3892
187001787	2584	3041	3360	3643	3898
187501790	2588	3046	3365	3648	3904
188001793	2592	3050	3370	3654	3909
188501796	2595	3055	3376	3659	3915
189001798	2599	3059	3381	3664	3921
189501801	2603	3064	3386	3670	3927
190001804	2607	3068	3391	3675	3933
190501807	2611	3073	3396	3681	3938
191001809	2615	3077	3401	3686	3944

191501812	2619	3082	3406	3692	3950
192001815	2623	3087	3411	3697	3956
192501817	2627	3091	3416	3703	3962
193001820	2631	3096	3421	3708	3968
193501823	2634	3100	3426	3713	3973
194001826	2638	3105	3431	3719	3979
194501828	2642	3109	3436	3724	3985
195001831	2646	3114	3441	3730	3991
195501834	2650	3118	3446	3735	3997
196001837	2654	3123	3451	3741	4003
196501839	2658	3127	3456	3746	4008
197001842	2662	3132	3461	3752	4014
197501845	2666	3137	3466	3757	4020
198001847	2670	3141	3471	3762	4026
198501850	2674	3146	3476	3768	4032
199001853	2677	3150	3481	3773	4037
199501856	2681	3155	3486	3779	4043
200001858	2685	3159	3491	3784	4049

(c) Basic child support obligation. Because shared physical care presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty one-hundredths (1.50).

(11) Child care costs. (a) Net child care costs incurred on behalf of the children due to employment or job search or the education of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(b) Child care costs shall not exceed the level required to provide quality care from a licensed source for the children. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child care costs.

(12) (Deleted by amendment, L. 96, p. 594, ? 7, effective July 1, 1996.)

(13) Extraordinary adjustments to schedule. (a) By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child shall be divided between the parents in proportion to their adjusted gross income:

(I) Any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child;

(II) Any expenses for transportation of the child, or the child and an accompanying parent if the child is less than twelve years of age, between the homes of the parents.

(III) (Deleted by amendment, L. 91, p. 234, ? 1, effective July 1, 1991.)

(b) Any additional factors that actually diminish the basic needs of the child may be considered for deductions from the basic child support obligation.

(13.5) (a) Health care expenditures for children. In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical and dental insurance coverage for the child or children through currently effective medical or medical and dental insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. At the same time, the court shall order payment of medical insurance or medical and dental insurance deductibles and copayments.

(b) Health insurance premiums. The payment of a premium to provide health insurance coverage on behalf of the children subject to the order shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

(c) The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy. This amount shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(d) After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross incomes, the amount calculated in paragraph (c) of this subsection (13.5) shall be deducted from the obligor's share of the total child support obligation if the obligor is actually paying the premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(e) Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child or children have been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to submit annually proof of continued coverage of the child or children to the delegate child support enforcement unit and to the other parent.

(f) Child residing in area not covered by health insurance policy. If a parent who is ordered by the court to provide medical or medical and dental insurance for the child or children has insurance that excludes coverage of the child or children because such child or children reside outside the geographic area covered by the insurance policy, the court shall order separate coverage for the child or children if the court determines coverage is available at a reasonable cost.

(g) Coverage for child's health insurance is an excessive amount of the order. Where the application of the premium payment on the child support guidelines results in a child support order of fifty dollars or less or the premium payment is twenty percent or more of the parent's gross income, the court or delegate child support enforcement unit may elect not to require the parent to include the child or children on an existing policy or to purchase insurance. The parent shall, however, be required to provide insurance when it does become available at a reasonable cost.

(h) Extraordinary medical expenses. (I) Any extraordinary medical expenses incurred on behalf of the children shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(II) Extraordinary medical expenses are uninsured expenses, including copayments and deductible amounts, in excess of two hundred fifty dollars per child per year. Extraordinary medical expenses shall include, but need not be limited to, such reasonable costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical

expense.

(14) Computation of child support. (a) Except in cases of shared physical care or split physical care as defined in subsections (8) and (9) of this section, a total child support obligation is determined by adding each parent's respective obligations for the basic child support obligation, work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule. The parent receiving a child support payment shall be presumed to spend his or her total child support obligation directly on the children. The parent paying child support to the other parent shall owe his or her total child support obligation as child support to the other parent minus any ordered payments included in the calculations made directly on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule.

(b) In cases of shared physical care, each parent's adjusted basic child support obligation obtained by application of paragraph (c) of subsection (10) of this section shall first be divided between the parents in proportion to their respective adjusted gross incomes. Each parent's share of the adjusted basic child support obligation shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical basic child support obligation owed to the other parent. To these amounts shall be added each parent's proportionate share of work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule. The parent owing the greater amount of child support shall owe the difference between the two amounts as a child support order minus any ordered direct payments made on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjust-

ments to schedule. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(c) (I) In cases of split physical care, a child support obligation shall be computed separately for each parent based upon the number of children living with the other parent in accordance with subsections (10), (11), (12), and (13) of this section. The amount so determined shall be a theoretical support obligation due each parent for support of the child or children for whom he or she has primary physical custody. The obligations so determined shall then be offset, with the parent owing the larger amount owing the difference between the two amounts as a child support order.

(II) If the parents also share physical care as outlined in paragraph (b) of this subsection (14), an additional adjustment for shared physical care shall be made as provided in paragraph (b) of this subsection (14).

(14.5) Dependency exemptions. Unless otherwise agreed upon by the parties, the court shall allocate the right to claim dependent children for income tax purposes between the parties. These rights shall be allocated between the parties in proportion to their contributions to the costs of raising the children. A parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax year or if claiming the child as a dependent would not result in any tax benefit.

(15) and (16) Repealed.

(16.5) In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act" on behalf of de-

pendent children due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government on behalf of dependent children due to the retirement of the noncustodial parent, the noncustodial parent's share of the total child support obligation as determined pursuant to subsection (14) of this section shall be reduced in an amount equal to the amount of such benefits. Social security benefits received by the minor children, or on behalf of the minor children, as a result of the death or disability of a stepparent are not to be included as income for the minor children for the determination of child support. However, any social security benefits actually received by a parent as a result of the disability of that parent, or as the result of the death of the minor child's stepparent, shall be included in the gross income of that parent.

(17) This section shall apply to all child support obligations, established or modified, as a part of any proceeding, including, but not limited to, articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., regardless of when filed.

(18) (a) The child support guidelines and general child support issues shall be reviewed and the results of such review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1, 1991, and at least every four years thereafter by a child support commission, which commission is hereby created. As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines to be used in the commission's review to ensure that deviations from the guidelines are limited. In addition, the commission shall review issues identified in the federal "Personal Responsibility and Work Opportu-

nity Reconciliation Act of 1996", Public Law 104-193, including out-of-wedlock births and the prevention of teen pregnancy. The child support commission shall consist of no more than twenty-one members. The governor shall appoint persons to the commission who are representatives of the judiciary and the Colorado bar association. Members of the commission appointed by the governor shall also include the director of the division in the state department of human services which is responsible for child support enforcement or his or her designee, a director of a county department of social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor shall attempt to appoint persons as parent representatives or as other representatives on the commission who include a male custodial parent, a female custodial parent, a male noncustodial parent, a female noncustodial parent, a joint custodial parent, and a parent in an intact family. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity by appointing at least one member from each of the congressional districts in the state. The remaining two members of the commission shall be a member of the house of representatives appointed by the speaker of the house of representatives and a member of the senate appointed by the president of the senate and shall not be members of the same political party. Members of the child support commission shall not be compensated for their services on the commission; except that members shall be reimbursed for actual and necessary expenses for travel and mileage incurred in connection with their duties. The child support commission is authorized, subject to appropriation, to incur expenses related to its work, including the costs associated with public hearings, printing, travel, and re-

search.

(b) (Deleted by amendment, L. 92, p. 188, ? 1, effective August 1, 1992.)

(c) (Deleted by amendment, L. 91, p. 234, ? 1, effective July 1, 1991.)

(d) (Deleted by amendment, L. 92, p. 188, ? 1, effective August 1, 1992.)

(e) (Deleted by amendment, L. 94, p. 1536, ? 5, effective July 1, 1994.)

(f) In reviewing the child support guidelines as required in paragraph (a) of this subsection (18), the child support commission shall study the following issues:

(I) The merits of a statutory time limitation or the application of the doctrine of laches or such other time-limiting provision on the enforcement of support judgments that arise pursuant to the provisions of section 14-10-122;

(II) Whether different time limitations on the enforcement of support judgments should apply depending on whether support payments are made directly to an obligee or whether such payments are made through the family support registry;

(III) The merits of support judgments arising automatically as provided in section 14-10-122 (1) (c); and

(IV) Whether support obligors should receive additional notice and an opportunity for hearing prior to execution on such judgments.

(19) The judicial department is responsible for promulgating and updating the Colorado child support guideline forms, schedules, and instructions.